

Before the
FEDERAL COMMUNICATIONS COMMISSION **RECEIVED**
Washington, D.C. 20554

MAY 22 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of Biennial Regulatory	§	
Review - Amendment of Parts 0, 1, 13,	§	
22, 24, 26, 27, 80, 87, 90, 95, 97, 101	§	
of the Commission's Rules to Facilitate	§	WT Docket No. 98-20
the Development and Use of the Universal	§	
Licensing System in the Wireless	§	
Telecommunications Services	§	

COMMENTS OF SBC COMMUNICATIONS INC.

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Dated: May 22, 1998

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COMMENTS OF SBC COMMUNICATIONS, INC.

Comes now SBC Communications ("SBC") on behalf of itself and its subsidiaries¹ and files these comments in the above referenced Notice of Proposed Rulemaking ("NPRM").

I. SUMMARY OF ARGUMENT

SBC generally supports the Commission's ambitious attempt in this NPRM to consolidate commonly used forms and rules in the interest of efficiency, expense control, and to promote regulatory parity. The Commission seeks to replace over 40 existing wireless forms with five new forms, and to consolidate the procedural rules governing applications from service specific rules found in over eleven rule parts, to

¹ SBC Communications Inc. ("SBC") is the parent/holding company of various subsidiaries conducting business under federal licenses. These subsidiaries include Southwestern Bell Telephone Company ("SWBT"), Pacific Bell Telephone Company ("Pacific Bell"), Nevada Bell Telephone ("Nevada Bell"), and various wireless carriers including Southwestern Bell Mobile Systems, Inc. ("SBMS"), and Southwestern Bell Wireless Inc. ("SWBW") and Pacific Bell Mobile Services ("PBMS"). The abbreviation "SBC" shall be used herein to include each of these subsidiaries as appropriate in the context.

integrate these varied rules into Part 1. The Commission also seeks to require electronic filing using the Universal Licensing System ("ULS"), and to streamline approval processes. The Commission further seeks to eliminate unnecessary or duplicative filing requirements and to define major and minor revisions.

While the bulk of the NPRM involves wireless applications, the term "wireless" in this context includes many services utilized by landline carriers, including but not limited to, microwave. SBC generally supports this effort, and files these Comments to bring to the attention of the Commission certain inconsistencies and gaps in the NPRM that should be remedied prior to adoption so that the restructuring of the rules can be seamless and minimally disruptive.

On page 5 of the NPRM, the Commission seeks comment on a list of issues. SBC generally supports each of these issues, and will comment upon each to inform the Commission of any perceived discrepancies and to suggest further rule consolidation or revision, as appropriate.

II. ARGUMENT

A. SBC generally supports the replacement of over 40 existing wireless forms with 5 new forms, but would suggest additional refinements.

The Commission proposes two new forms to cover wireless transfers of control, disaggregation and assignments. (See Forms Appendix A, Forms 603 and 604). These two forms are largely duplicative. With a minimum of revision, one form could be used for both transfers of control and assignment. The Commission has already simplified to a letter confirmation the process of *pro forma* transfers of control within a corporate family. Transfers outside the *pro forma* context would, by definition, require

a change that would trigger a 603 as well as a 604 filing. Consolidation of these forms would shorten waiting and approval times and would mitigate the paperwork burden on the carrier as well as the administrative burden on the Commission. The incorporation of the “auctionable services” schedules when needed, could provide the Commission with the information it requires while eliminating a separate form. If no auctionable services were needed, the carriers could exclude the schedules and answer a question on the form to explain no such services are at issue.

The Form 601 raises several concerns that will be addressed *infra* as the pertinent rule parts are analyzed. This form requires clarification and definition in order to be a useful device to both the Commission and to the carriers.

B. SBC generally supports consolidation of procedural rules from various rule parts under Part 1, but would suggest the inclusion of several additional rules as well as requesting certain clarifications.

The Commission has made an ambitious effort to identify and consolidate procedural rules from eleven rule parts into Part 1. The common thread uniting these rules is their relevance to licensing and application requirements. Central to the existing forms in use today as well as the new forms proposed by this NPRM is the reporting of location tolerances (latitude, longitude and ground elevations). The Commission should take this opportunity to resolve any tolerance discrepancies existing within the current rules and applications, and to centralize these rules for easy reference.

Further, the Commission rules governing AM detuning, station inspection, operation and maintenance requirements and station discontinuance rules should also be

combined under Part 1, as they incur many of the same issues regarding tolerance and applications. All are procedural in their intent, and most involve a filing. Thus, SBC suggests the following rules also be included in the Part 1 consolidation:

Rule 22.929 (b)(1).	Application requirements for Cellular Radiotelephone Service (location information)
Rule 22.301	Station Inspection
Rule 22.305	Operation and Maintenance Requirements
Rule 22.307	Operation during emergency
Rule 22.317	Discontinuation of station operation
Rule 22.371	Disturbance of A M Patterns
Rule 24.815	Technical Content of Applications and Maintenance of list of station locations
Rule 101.103	The position location note within the Frequency Coordination Procedures Rule
Rule 101.20	Station Inspection
Rule 101.205	Operation under Emergency
Rule 101.305	Discontinuation, reduction or impairment of service

C. SBC generally supports electronic filing using ULS forms, but there are several issues that could make such filings economically unfeasible or time burdensome.

Electronic filing and the accompanying elimination of multiple paper copies and microfiche makes good sense economically, ecologically and from a usage of time perspective.² However, certain filings do not lend themselves to electronic filing, and the paper alternative should be permitted for carriers who should certify to the extenuating circumstance requiring a manual filing. The elimination of multiple copies and microfiche copies should be extended to these manual filings. Manual filings should not be limited to a class of carriers, as suggested in the NPRM, but should be

² The logical application of this NPRM is to prospective filings *only*. There is no requirement, nor should there be, to convert existing data filed on paper to an electronic format. To do so would create an unreasonable burden on the carriers and would flood the Commission with duplicative filings.

available to any carrier experiencing an “extenuating” circumstance (e.g., a system crash or failure, with a filing deadline subject to being missed). There should also be a “standing” contingency plan in the event the Commission’s system experiences a “crash.” This could happen on a key deadline such as renewal, or it could occur because of the system being “choked” by multiple filers on a deadline, as has occurred with various auction filings. Providing for the inevitable contingency of a mechanical failure or unforeseeable delays will provide certainty to the carriers and will prevent the Commission from having to handle *ad hoc* crises as they may erupt. SBC recommends that access to applications and license information should be via Internet, not by dial-up connection. The ULS should also contain information on the status of an application so that the applicant can obtain speedy information without having to search for Public Notices. The grant should also be listed, along with an electronic notification to the applicant.

In general, electronic filing will assist the Commission by eliminating the processing and storage of large amounts of paper and microfiche. This savings should pay for any “public” terminals for use in filing without requiring any contribution from the carriers. Likewise, SBC does not support contributing to a common facility to permit the public to file electronically. Persons without electronic access should be permitted to file manually, and to certify as to that lack of access. Absent abuse, that should be a small segment of the carrier population.

The filing of petitions to deny, motions, oppositions, replies and waiver requests, as well as Wireless Telecommunications Bureau filings, should also be made electronically, although paper copies should continue to be served on the parties.

The challenge facing the Commission is the expense and necessity to ensure the electronic system keeps pace with current technology and technology advancements. For instance, the current FCC Internet page lists Windows 95 accessibility, but not Windows NT. Windows NT is a newer application and is widely used because it offers certain security advancements. The FCC Technical Group has indicated it is uncertain if it can support Windows NT.

In order for electronic filing to be successful, the Commission must keep pace with software advancements rather than adhere to applications that have become technologically antiquated. To do less threatens the very viability of electronic filing.

SBC does not support the elimination of mapping requirements and further suggests such elimination is not in the public interest. PCS carriers should be required to file maps of their systems at the prescribed 5 year build out and at the 10 year licensing period. Cellular carriers should continue to supply updates to maps as their CGSA changes. All such maps should be a matter of public record and on line access and/or paper copies should be available to the public upon request. Though the Commission claims it will create maps and publish them on line, that is not feasible under the proposed rules. For instance, the Commission proposes PCS carriers do not have to submit radial data on the new Form 601, therefore the Commission would not be capable of creating a map for a PCS provider based upon filed materials.

D. SBC generally supports streamlining the application and authorization process including cancellations, amendments, modifications, reinstatements and construction and coverage requirements, although clarification is needed.

In order to ensure the "major versus minor" amendment proposal in the NPRM is sound, the Commission should clarify several points. First, on page 16 at paragraph 38, the NPRM states that a major modification includes "Any modification or amendment requiring notification of the Federal Aviation Administration as defined in 47 CFR Part 17 Subpart B." This requirement is unclear. A Form 854 filing is already required for such locations, and the Commission should either make clear that the filing required is the Form 854, or if it expects to see a Form 601 filed (see schedule D), then Form 854 should be eliminated as duplicative.

Perhaps the appropriate resolution is to omit this from the "major" list. The requirement to file a Form 601 is largely duplicative of existing requirements to satisfy the FAA on these sites. It is the FAA, not the FCC, who has a direct need to know about these sites and the process for informing the FAA is already in place. Adding a major modification filing to this process is redundant and will increase the delays in building sites. The benefit to the FCC is elusive, and the public interest is served by the existing FAA requirements. This would be a burden without any attendant value, which is contrary to the initiative of this NPRM.

Form 601, Schedule F clearly indicates that a major filing is required if there is a cellular expansion into unserved area, and yet such an expansion is not included on the list in paragraph 38. This anomaly should be clarified. The Commission should clarify how to file exhibits to Form 601 (see items 7, 40 – 48) when filed electronically.

Is it the Commission's intent to do away with coverage related filings for cellular carriers? As CGSA expansion is not listed as major, the Commission must finally resolve the multitude of disputed unserved area issues that are present in many cellular MSAs today. The failure to resolve these issues has resulted in confusion and the inability to provide optimal service. Consolidating the rules and forms provides the Commission with the opportunity, and indeed the necessity, to resolve these issues.

The Commission should clarify how CGSA expansion would be viewed under the proposed rules, and how the unserved area rules are to be interpreted. It is not in the public interest to continue to ignore these existing disputes over unserved areas and to develop new rules that do not include the resolution of these issues.

Paragraph 38 also states "Any addition or change in frequency," is a major filing. This proposed rule does not make sense for PCS and cellular carriers. It would impose a burden that is neither practical nor reasonable and would be contrary to the public interest by creating unwarranted delays and handicap the delivery of efficient wireless service. PCS and cellular carriers are licensed on a channel block basis and should be permitted to manage their system within those blocks. Because of this licensing, nothing is gained by the imposition of this rule. On the other hand, the carriers' flexibility to make daily changes within its channel block would be severely impaired, thus impairing the delivery of efficient service to the public. For instance, GSM technology, which is the technology used by PBMS to provide PCS service in California and Nevada, permits "frequency hopping" among assigned frequencies to enhance coverage and mitigate interference. This permits cell sites maximum flexibility

and effectiveness. Changes within the channel block licensed to the carrier should be excluded from this rule.

Page 17, Paragraph 38 lists certain criteria for major modifications for microwave. One such change is stated as follows:

“Any change which together with all minor modifications or amendments since the last major modification or amendment produces a cumulative effect greater than all of the above major criteria.”

This provision is impossible to translate into day-to-day usage. It would require a balancing act without rope or net. The only possible purpose it could serve is to catch a well-meaning carrier unawares, resulting in a forfeiture for failing to file a major modification when the carrier misjudged the “cumulative” effect of years of minor modifications. This “catch-all” provision should be eliminated. Alternatively, it must be broken down and defined in objective terms that would give a well-meaning carrier a fair opportunity for compliance.

E. SBC generally supports consolidating and revising the rules that determine minor or major modifications, but would suggest the Commission clarify several of the new rules before adoption.

The consideration (and rewriting) of the rules governing major and minor applications for the various rule parts requires additional refinement. For instance, proposed Rule 1.947 (replacing 22.163) refers to a 30 day notification period. Is this just for sites that alter CGSA, for all sites for all carriers, or something else? Further definition is required.

1. Rule 22.352:

The proposed revision of Rule 22.352 states “no protection is provided against interference to the service of any additional or modified transmitter operating pursuant to 22.163 or 22.165 unless and until the licensee notifies the Commission using Form 601 of the additional or modified transmitter.” This flies in the face of the Commission’s long-standing rules and positions that provide frequency protection by geographic license, and not by site specific license (e.g., see Rule 22.911(d)). Since most sites are unfilled (e.g., internal cellular sites and most PCS sites), how is a carrier assured of frequency protection? This lack of certainty and, indeed, diminution of an existing protection is not in the public interest. This proposed rule needs to be rewritten to reiterate and reinforce protection by geographic license. Otherwise, the Commission will be flooded with filings for internal cellular and PCS sites that haven’t been filed before in order for a carrier to ensure its system is properly protected from interference. Either that, or a flood of customer complaints may follow due to the sudden introduction of interference into a formerly protected system.

2. Rule 24.203(d):

The Commission has not clearly defined the mapping coverage and 5 year build out requirements for PCS carriers. For example, proposed rule 24.203(d) indicates “the licensee must notify the Commission by using the FCC Form 601 via the ULS.” Notify the Commission of what data? General information? Site specific information? Maps? Without further guidance, the Commission is sure to get inconsistent reports, and the level of compliance will vary greatly among similarly situated carriers.

As the Commission rewrites these rules, the licensees need to be informed of what information the Commission requires them to maintain at the various control points. In other words, in the event of an FCC audit or upon license renewal, what information would the Commission consider sufficient? This needs to be defined in all rules parts.

3. *Rule 22.371:*

The rule governing disturbance of AM towers should either be eliminated, or applied equally (under Part 1) to all carriers in order to assure regulatory parity. The disturbance, if any, is created by the structure itself, and is not unique to any service or service provider. Indeed, trees, buildings, and any other structure is as great a potential interference as is a tower, so the more progressive view would be to eliminate this rule altogether, rather than penalizing one segment of the industry.

4. *Rules 22.401, 22.323:*

The cellular rule for developmental authorizations (22.401) is not addressed in Part 24. In the interest of regulatory parity, this rule should apply (or not) equally to PCS and cellular carriers. Another rule covering incidental services (22.323) is also omitted from Part 24. For the above stated reasons, these rules should apply equally.

5. *Other references:*

On Page 23 of the NPRM, the Commission discusses the discontinuation of “reinstatement” applications. Because the risk to the carrier is cancellation of a license

if it fails to receive the proposed pre-expiration notice, SBC suggests the Commission keep in place a reinstatement opportunity until such time that the Commission is confident its electronic databases are accurate and up to date, and it is beyond dispute that notices are sent in a timely manner.

On Page 33 of the NPRM, the Commission discusses the elimination of type acceptance numbers, line loss, channel capacity, and baseband signaling type. SBC supports this initiative.

On Page N4-N5 of the NPRM, there is an error requiring conditional authorization. Proposed rule sections 101.31(b)(vi), (vii), and (viii) were revised in Docket 93-2 and adopted February 24, 1998. These proposed rules should conform with that adoption.

The Commission should lift the conditions on the 23 GHz band as it did with the 10 GHz band. (See Page N5). The elimination of these conditions would expedite application processing and serve the public interest.

On Page N6 (subparagraph vi), the Commission should clarify regarding the 21.2-23.6 GHz band with an ERP greater than 55 dbm pursuant to Section 101.147(s). If this means the conditional authorization applies only to the 4 low power channel pairs listed in 101.147(s), then the rule should state that fact explicitly by listing the affected channel pairs.

The proposed discontinuance of service rules under proposed rule 101.305 (Page N9) should be conformed to the proposed rule 22.317 which requires the Commission be notified on Form 601 when a station is permanently discontinued. This allows for parity and for consistency across the rules.

F. Reconciling NAD27 and NAD83 Conversions

There is a confusing series of rule and form requirements concerning the use of NAD83. Currently the Form 600 requires that NAD83 be rounded to the nearest whole number. The FCC Form 854 allows for the same rounding. However, the FAA Forms 7460 and 7460-1 require rounding to the nearest *hundredths*. The new proposed rule 1.923 and the new proposed forms ask for NAD83 rounded to the nearest *tenths*. It makes no logical sense for the FCC to either create or perpetuate a divergence with existing FAA standards. Forms 854 and 601 should be revised to be consistent, and Rule 1.923 should also be consistent with that revision. At a minimum, Rule 1.923 should match the requirements on the forms. Certainly, it is not in the public interest to disrupt existing filings with *any* new calculations. To do so would create chaos with the carriers and with the federal databases, which would be flooded with corrective filings. Rather, existing filings should be grandfathered and the rounding of NAD83 to accepted tolerances should pertain to future filings.

The FCC may also want to take advantage of this NPRM to address ground elevation standards covered in NAVD29 and 88. Resolving the inconsistencies in these measurements could resolve future problems and this opportunity to do so should not be overlooked.

G. Letter Requests and Filing Fees

While the statistics the Commission stated on the number of letter requests processed are daunting, the continued use of letter requests in limited circumstances makes sense. For instance, a mere change of name or address could still be handled by

letter. Alternatively, the Commission could use electronic filing but classify these administrative changes as notifications that do not trigger filing fees. Otherwise, a mere move of office could create tens of thousands of dollars in unnecessary fees. This would be an unreasonable and an untoward burden on the licensees. (See, e.g., proposed changes to 90.135 which eliminate the change of address exclusion). The Commission should ensure that its efforts to simplify and streamline the filing process are not undermined by "stealth" revenue increases by making filings feeable that currently do not incur a fee. This could result from the fact the Commission requires a form filing which triggers a fee even though the purpose for the filing (e.g., relinquishing spectrum) is not otherwise a feeable event. The Commission should clarify that a fee is not required on administrative changes and spectrum relinquishment. A process should be put in place that permits a filer to use ULS to file these kind of changes in data without triggering a fee. A "fee required yes/no" box could accomplish this end result. To the extent the Commission is seeking to enlarge its fee requirements through this docket, it should specifically state that intent, explain the necessity behind that enlargement and quantify the numbers. Once that notice is given, interested parties should be permitted to comment on these specific issues.

H. Support of Remaining Provisions

SBC agrees generally with the remaining goals of conforming return and dismissal procedures for defective or incomplete applications, standardizing the collection of ownership information from wireless licensees, requiring submission of a

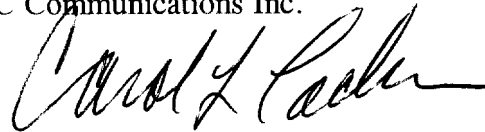
Taxpayer Identification Number and eliminating unnecessary or duplicative filing requirements.

III. CONCLUSION

SBC encourages the Commission's ambitious initiative to simplify, consolidate and equalize the procedural rules. With some further clarification and revision, this NPRM should result in streamlined procedures and increased parity for the carriers as well as simplified delivery of service to the public.

Respectfully submitted,

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